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DEPARTMENT FOR AF/W (SILSKI) AND AF/EPS (POTASH)
DEPARTMENT PASS TO USTR (HAMILTON)

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SUBJECT: AGOA ELIGIBILITY REVIEW - NIGERIA

REF: STATE 163056

11. (U) Country: Nigeria
Current AGOA Status: Eligible

12. (U) Country Background Summary: Estimated population of 140 million. 2005 GNI was \$74.2 billion; 2005 GNI per capita was \$560. (World Bank 2006 Data) Nigeria completed civilian-run national and state elections in 2003 that were marred by irregularities and fraud and continued to struggle to consolidate democracy. General elections are slated for 2007 marking a hand-over from civilian to civilian rule, but the electoral commission seems unprepared. The government continues to make slow progress toward developing an open economy, minimizing government interference, and promoting free market principles.

Comments on Eligibility Requirements Market-based Economy

13. (SBU) Major Strengths Identified: The government committed to transitioning from state directed economy to one driven by market forces. The economy expanded by 6% due to an improved macroeconomic environment. "Wholesale Dutch Auction" system of foreign exchange trading was introduced early 2006, and has led to a sharp reduction in the spread between the official and parallel market exchange rates. Nigeria received debt relief from the Paris Club during the fourth quarter of 2005 resulting in a debt write-off of about \$18 billion. The government is also nearly finished with plans to pay its London Club debt. The government has a Policy Support Instrument (PSI) with the IMF, which is a new approach to IMF monitoring. In September 2006, the IMF assessment team confirmed that Nigeria met all the benchmarks for the review period. Power sector reforms are ongoing. The unbundling of the National Electric Power Authority (NEPA) has been concluded. A holding company, Power Holding Company (PHCN) has taken over the assets and liabilities of NEPA, while an electricity regulatory commission has been established. PHCN is made up of 18 companies. The Bureau of Public Enterprises (BPE) plans to privatize all the companies and enable private investment in generation and distribution. Port concessions are moving forward and an international company was awarded the concession to manage the country's largest port--Apapa Port in Lagos. The Nigerian Communications Commission (NCC) introduced the unified licensing regime in the first quarter of 2006 to further deregulation and spur competition. Nigeria Telecommunications Ltd (NITEL) privatization was concluded in July 2006 though it seems unclear if the preferred bidder, Transcorp, has made the full payment. Negotiations are yet to be concluded between BPE and Transcorp but a payment of \$750 million has been made. Nigeria is a WTO member. Civil Service reform is progressing with the monetization of in-kind benefits implementation and downsizing of 33,000 public servants is expected to be completed before the end of 12006. Nigeria launched National Economic Empowerment & Development Strategy (NEEDS), a medium-term economic reform program (2003-2007) focused on privatization, good governance, macroeconomic stability,

anti-corruption, and public service reforms. Savings from excess monies from crude oil sales above the \$35 benchmark price have been put into a special reserve account, rather than used to fuel fiscal expansion. The government budget process is taking its rightful position as an economic policy and management tool. The budget deficit has been kept in check. All three tiers of government are adhering to fiscal discipline with a consolidated surplus of 10% in 2004. New Chart of Accounts introduced in 2005. Banking reforms are ongoing. Central Bank of Nigeria's directive that banks recapitalize from the Naira 2 billion to Naira 25 billion by December 31, 2005 was successfully completed, leading to a reduction in the number of banks from 89 to 25 banking groups. Pension and insurance reform also moving forward.

14. (SBU) Major Issues/Problems Identified:

Huge and inefficient public sector dominates and inhibits faster development of the formal sector. Much of the nation's wealth is concentrated in the hands of tiny military, political, and commercial elites through corruption and non-transparent government contracting practices. The banking system is poorly performing intermediation, therefore impeding small and medium investors. Regulatory and tax regimes are arbitrarily enforced. Regulatory bodies are weak and ineffective. Oil and gas receipts account for 80% of government revenues and over 95% of exports. Fuel subsidies are not budgeted and nontransparent; the Nigerian National Petroleum Corporation (NNPC) directly accesses national treasury; potential for corruption and abuse are enormous. Economic data and statistics are of unreliable quality and availability. Regulatory bodies are weak and ineffective. Fuel prices continue to be regulated and subsidized. Inadequate and unreliable infrastructure is a major barrier to private sector activity. Nigeria faces growing pressure for looser fiscal and monetary policy. The Intellectual Property Rights Commission (IPRC) was not established as announced. The 1978 Land Use Act mandates state ownership of land; private use of land

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is restricted to a 99-year lease, and subject to government confiscation without a Certificate of Occupancy or Governor's consent. Conveyance of land requires high level government approval, promoting corruption and inhibiting property transactions.

Political Reforms/Rule of Law/Anti-Corruption

15. (SBU) Major Strengths Identified:

Elections held in 2003 for some local governments, state governors and assemblies, and national legislators, and the President. The elected civilian government is in its seventh year. Thirty political parties participated in 2003 elections. There was progress recognizing political pluralism, and establishing the right to fair trial and equal protection under law, rights guaranteed constitutionally. Nigerian Supreme Court made landmark decisions in early 2002 affirming its role as arbiter of the national constitution. Nigeria signed transparency and anti-corruption agreement with the United States and other G-8 members at the Sea Island Summit in 2004. It has established programs to combat corruption, many of which receive support from the United States and other donors.

The Economic and Financial Crimes Commission (EFCC) has seized \$5 billion in assets from corruption cases since it was established three years ago, arresting several high level officials. In December 2005, the governor of Bayelsa State in south-south Nigeria was impeached for money laundering and misappropriation of funds. He is currently facing trial. The Inspector-General of Police and the Minister of Education were fired for corruption. The Senate President was removed from his post for corruption, though he retained his Senate seat. The EFCC is investigating ongoing corruption charges against state governors and their associates. The top levels at the Customs Administration were replaced on corruption charges.

16. (SBU) Major Issues/Problems Identified:

Communal violence continues, especially the latter in the oil-rich Niger Delta. The elections of 2003 were marred by serious irregularities, fraud, with violence in some areas. The Independent

National Electoral Commission (INEC), the body charged with the conduct of elections, is not independent, and argued in court throughout 2004-2005 that it need not be independent. Public opinion is that the INEC is not prepared for the 2007 general elections. Judges are subject to both bribery and intimidation, if not outright threats. Corruption remains an overwhelming problem. To date there have been no convictions of any high-level official for corruption. Use of militias and vigilante groups by politicians continues. The government remains unable to guarantee citizens the right to a speedy and fair trial. The government has failed to implement some key court decisions. The judicial system is weak and in need of serious reforms. Excessive violence, lethal force, and corruption at police and military roadblocks and checkpoints continues, despite the Acting Inspector-General of Police's announcement in January 2005 that police roadblocks would be eliminated. Prison and detention conditions remain harsh and life threatening. Some prisons held 200 to 300 percent more persons than their designed capacity. The failure to curb oil bunkering fuels corruption, arms trafficking and political instability.

Elimination of barriers to U.S. Trade and Investment

17. (SBU) Major Strengths Identified:

A TIFA with the U.S. provides a mechanism to address trade and investment issues. Nigeria is a top destination of U.S. investment in Africa, due to investment in the petroleum sector. U.S. exports to Nigeria rose by about 4% in 2005 over 2004. In the first seven months of 2006 U.S. exports increased 35% over the same period in 2005.

18. (SBU) Major Problems/Issues Identified:

Multiple bans in violation of WTO rules in the last three years have affected imports of many agricultural products. The arbitrary bans encourage smuggling. Import bans accompanied by sole source importation rights to favorite partners have impeded competition. Comprehensive trade reform by adoption of the ECOWAS Common External Tariff was implemented in the last quarter of 2005. However, trade and investment policies are frequently changed, suspended, cancelled or implemented inconsistently. Some U.S. firms with contracts with the government face consistent problems receiving timely payments. No progress has been made as the result of TIFA negotiations. Negotiators report that the President ultimately makes decisions on trade and investment issues. The Nigerian government procurement process lacks transparency. Nigeria's Cabotage Law is a barrier to trade and investment and has compelled U.S. firms to exit Nigeria. In the oil and gas sector Nigeria is imposing or threatening to

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impose requirements to invest in power production or refining, in an attempt to force investment in unprofitable sectors. The availability of fuel import subsidies are limited to NNPC, forcing out potential competitors in the downstream fuel market. Local content requirements impose additional costs in investments. Across several sectors, the government employs predatory negotiating tactics, including threats to access to inputs, customs and other legal approval processes, and transferring contracts to entities that cannot uphold contract terms. Foreign Exchange repatriation regulations are enforced arbitrarily. Access to imported inputs under the Manufacturers-in-Bond Scheme is suspended, highly politicized and is available only by Presidential directive.

Poverty Reduction

19. (SBU) Major Strengths Identified: National Planning Commission finalized NEEDS, Nigeria's homegrown Poverty Reduction Strategy. NEEDS is due for review in 2007. The National Poverty Eradication Program (NAPEP) is being implemented at the local government level, and focusing on micro-enterprise development and other programs. the National Assembly appropriated over Naira 100bn for spending towards Millennium Development Goals in Budget 2006

10. (SBU) Major Issues/Problems Identified: The government poverty strategy does not clearly link goals and methods; serious concerns

remain about fiscal transparency; human capacity for project implementation is weak. The government is implementing the poverty program slowly.

Workers' Rights/Child Labor/Human Rights

¶11. (SBU) Major Strengths Identified: Improvements in some areas of human rights, including the arrests of several traffickers of persons; yet serious problems remain, such as continued lack of accountability for past abuses. The Constitution provides for freedom of religion, and the government generally respects that right, although some state governments place restrictions on freedom of religion. The Nigerian Constitution protects the right of association and the right to organize and bargain collectively, but statutory restrictions remain in place. In June 2005, a court struck down legislation that required a police permit for all public rallies and processions. Nigerian law prohibits forced or bonded labor, forbids the employment of children younger than age 15 in commerce and industry, and restricts other child labor to home-based agricultural or domestic work for a maximum of eight hours a day. All known political prisoners and most known political detainees have been released. Security forces still commit human rights violations, but these no longer appear to be systematic or officially sanctioned. Workers, except members of armed forces, police, and employees designated essential by Government, may join trade unions and strike, but reasons for striking are limited. In 2002, President Obasanjo signed the instruments of ratification for International Labor Organization (ILO) convention 182, Worst Forms of Child Labor; Convention 138, Minimum age for Employment; and Convention 111, Equality of Occupation. It ratified ILO convention 87 on the Freedom of Association and Convention 98 on the Right to Organize and Collective Bargaining. The government has also ratified ILO conventions on forced labor. Worker rights and child labor laws have been enacted, but to date the Child Rights Act has only been ratified by six states. New legislation was passed in 2003 outlawing human trafficking, and the National Agency for the Prohibition of Trafficking in Persons (NAPTIP) was established.

¶12. (SBU) Major Issues/Problems Identified: Most major social indicators remain weak; for example, under-5 child mortality is at an alarmingly high level of 20 percent. Domestic violence and discrimination against women remains widespread. Outbreaks of violence and community unrest in the oil-producing Niger Delta caused occasional disruption in Nigeria's oil production. Army troops killed nearly 200 unarmed civilians in October 2001 in Benue state, but to date there has been no accountability for the incident. Police and security forces continue to use excessive and sometimes lethal force to beat protesters, suspects, detainees and convicts, and to use arbitrary arrest and detention. Prolonged pretrial detention remains a problem. There exist no laws that prohibit retribution against strikers. The Trade Unions Act does not ensure workers right to form and join unions of their own choosing, deems all registered trade unions to be affiliated with the central labor organization, and violates the ILO convention on the Right of Association. The Trade Unions (Amendment) Decree of 1996 makes check-off payment of dues conditional on a "no-strike" clause during the lifetime of the collective agreement. The Trade Unions Amendment Act of March 2005 criminalizes meetings between labor and civil society organizations and bans nation-wide strikes on any issue but service conditions. The Act ended the Nigerian Labor Congress' status as the sole,

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central labor organization, and the Trade Union Congress has yet to receive official federal government recognition. While decentralization may seem better for the right to form and join unions, it has weakened the labor movement in Nigeria. Labor rights have been limited by targeted layoffs and terminations of labor activists, by intimidation to press workers to leave unions, and by the increased use of casual labor, especially in the oil industry. Payment of salaries to government workers is often several months in arrears; workers who protest or strike over arrearages face dismissals, threats of layoffs, and pressure to agree to lowered minimum wages. The government places limits on freedom of assembly and association, citing security concerns. Trafficking in persons

for purposes of prostitution and forced labor is a problem, allegedly with collusion of government officials. Some persons including children are subjected to forced labor, and child labor is rising. The relationship between the government and the National Labor Congress (NLC) remains severely strained since 2003 because of the President's determination to deregulate fuel prices, and the trade union's use of general strikes to protest price hikes.

International Terrorism/U.S. National Security

¶13. (SBU) Major Strengths Identified: President Obasanjo has taken personal action in building West African support for anti-terrorism coalition activities. In June 2006, Nigeria was de-listed from the Financial Action Task Force list of Non-Cooperative Countries and Entities. The Nigerian Financial Intelligence Unit, Economic and Financial Crimes Commission (EFCC), Securities and Exchange Commission, Central Bank and other regulators in the financial services industry are collaborating to identify and freeze terrorist assets in Nigeria.

¶14. (SBU) Major Issues/Problems Identified: None.

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